

Introduced by Senator Morrow

February 22, 2005

An act to amend Section 2782 of the Civil Code, relating to construction contracts.

LEGISLATIVE COUNSEL'S DIGEST

SB 947, as introduced, Morrow. Construction contracts: indemnity.

Existing law provides that agreements affecting any construction contract that purport to indemnify the promisee against liability for damages for death or bodily injury to persons, injury to property, or any other loss, damage, or expense arising from the sole negligence or willful misconduct of the promisee or the promisee's agents, servants, or independent contractors who are directly responsible to the promisee, or for defects in design furnished by those persons, are against public policy and are void and unenforceable, except as specified.

This bill would provide that any provisions, clauses, covenants, or agreements contained in, collateral to, or affecting any construction contract entered into on or after January 1, 2006, for the construction of residential units, as specified, that purport to indemnify the promisee against liability for damages for injury to property, or any other loss, damage, or expense arising from the act or omission of the promisor, shall be limited only to damages, injury, loss, or expense caused by the promisor, or the promisor's subcontractors, agents, or representatives, without regard to any applicable standard of liability, except as specified.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 2782 of the Civil Code is amended to read:

2782. (a) Except as provided in Sections 2782.1, 2782.2, 2782.5, and 2782.6, provisions, clauses, covenants, or agreements contained in, collateral to, or affecting any construction contract and ~~which~~ *that* purport to indemnify the promisee against liability for damages for death or bodily injury to persons, injury to property, or any other loss, damage, or expense arising from the sole negligence or willful misconduct of the promisee or the promisee's agents, servants, or independent contractors who are directly responsible to ~~such~~ *the* promisee, or for defects in design furnished by ~~such~~ *those* persons, are against public policy and are void and unenforceable; provided, however, that this provision ~~shall~~ *does* not affect the validity of any insurance contract, workers' compensation, or agreement issued by an admitted insurer as defined by the Insurance Code.

(b) Except as provided in Sections 2782.1, 2782.2, and 2782.5, provisions, clauses, covenants, or agreements contained in, collateral to, or affecting any construction contract with a public agency ~~which~~ *that* purport to impose on the contractor, or relieve the public agency from, liability for the active negligence of the public agency ~~shall be~~ *are* void and unenforceable.

(c) (1) *Notwithstanding subdivision (a), any provisions, clauses, covenants, or agreements contained in, collateral to, or affecting any construction contract entered into on or after January 1, 2006, for the construction of residential units subject to Title 7 (commencing with Section 895) of Part 2 of Division 2, that purport to indemnify the promisee against liability for damages for injury to property, or any other loss, damage, or expense arising from the act or omission of the promisor, shall be limited only to damages, injury, loss, or expense caused by the promisor, or the promisor's subcontractors, agents, or representatives, without regard to any applicable standard of liability.*

(2) *Paragraph (1) shall not affect the validity of any insurance contract, workers' compensation, or agreement issued by an admitted insurer as defined by the Insurance Code.*

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